

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 25
SUBREGION 33

MID CENTURY TELEPHONE CO-OPERATIVE

Employer

And

Case 25-RC-225430

COMMUNICATION WORKERS OF AMERICA,
AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing to determine an appropriate unit for collective bargaining was held on August 20 and 21 2018, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board. Under Section 3(b) of the Act, the undersigned has the authority to hear and decide this matter on behalf of the Board.¹

I. ISSUE

Petitioner seeks to represent a unit of Network Operations Lead Technicians, Network Operations Technicians, Network Operations Administrators, Plant Assignors, Service Technicians, Construction Employees, Splicers, Grounding Technicians, and Custodians employed by the Employer at its Fairview, Illinois facility, where the Employer provides telephone, high speed internet, and IP services to 18 communities in Illinois. There are approximately 18 employees in the petitioned-for unit. The Employer maintains that the unit sought by Petitioner is not appropriate and that the only appropriate unit must also include the employees in the Engineering department which includes Mapping/Project Lead, Systems Planners and Inspection/Staking employees as well as Easement employees employed by the Employer at its Fairview, Illinois facility. The Employer also contends that the Network Operations Lead Technician is a supervisor under the Act and the Custodian employee should be excluded from unit because that position does not share a sufficient community of interest with the other employees in the unit. There are approximately 22 employees in the unit proposed by the Employer.

¹ Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. The Petitioner is a labor organization within the meaning of the Act.
- d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of 9(c)(1) and Sections 2(6) and (7) of the Act.

II. DECISION

Based on the record and relevant Board law, I am directing an election in this matter be held because a question concerning representation exists under Section 9(c) of the Act. I find that the following unit is appropriate and direct an election in that unit:

Included: All full-time and regular part-time Network Operations Lead Technicians, Network Operations Technicians, Network Operations Administrators, Plant Assignors, Service Technicians, Construction employees, Grounding Technicians, Splicers, Custodians, Mapping/Project Leads, Systems Planners, Inspection/Staking employees, and Easement employees employed by the Employer at its Fairview, Illinois facility; BUT EXCLUDING All Customer Service Representative Leads, Customer Service Representatives, Sales Representatives, Sales Support Specialists, Marketing Coordinators, Billing Specialists, Account/Payroll Clerks, Lead Accountants, managerial employees, office clerical employees, professional employees, and guards and supervisors as defined in the Act.

There are approximately 24 employees in the appropriate unit for whom no history of collective bargaining exists.

III. STATEMENT OF THE FACTS

The Employer is engaged in the business of providing telephone, high speed internet, television, and IP services in 18 communities in Illinois. The Employer has a business office in Fairview, Illinois and approximately 14 central offices in Stark, Henry, Knox, Peoria, and Fulton Counties and infrastructure in McDonough County. The Employer has four major departments: the Chief Financial Officer oversees the accounting and billing employees; the Marketing Manager oversees marketing employees; an Assistant Manager who oversees sales representatives and customer service representatives; and the Director of Operations who oversees Operations. It is the Operations Department at issue in this case. The Operations Department consists of Network Operations, Install and Repair, Engineering and Project Management, and Custodian all of which, except the Custodian, are overseen by Managers who report to the Director of Operations, who, in turn, reports to a General Manager/CEO. Employees in the Operations Department work both in the central offices and in the field.

A. Network Operations

The Network Operations Department is overseen by Network Operations Manager Jason Baugher. There are six employees who report to Baugher: Network Operations Lead Technician Jon Oest, Network Operations Technician Rudy Hadsell, Network Administrator Anthony Hickie, Network Administrator Matt Tomlianovich, and Plant Assignor Robert Mummert.

The network operations employees are responsible for maintaining and installing new equipment on the Employer's main core network, but they all have specific roles. Jon Oest is the

Network Operations Lead Technician. He previously worked in Install and Repair. He has been in his current position since about March 2018. He received a pay raise with the promotion, and his current salary is \$24.37 per hour. Oest has an Associate Degree in Electronics and training certifications. Oest did not have prior industry experience before starting at the Employer. As for his job duties, Oest's main focus is the Employer's Adtron equipment. In addition, Oest also works in the central offices setting up new equipment. Oest spends his time working in the main office or in smaller offices in the field.

Rudy Hadsell is a Network Operations Technician. The evidence indicates that his focus is CISCO, which is the main core of the Employer's equipment. Director of Operations Buck testified that Hadsell works a lot with IP addresses. Hadsell spends the most of his time reinforcing the office, but does some work in the field as well. He previously worked for a network services company prior to joining the Employer.

Anthony Hickie is a Network Administrator who manages the Employer's business network inside the main office in Fairview, Illinois. Director of Operations Buck testified that Hickie occasionally assists the other network operations technicians in the field, but he spends almost all of his time in the Fairview office. Hickie also services all company laptops, tablets, handles hardware and software issues, and sets up email. Hickie previously worked for a computer repair company.

Matt Tomlianovich is a Network Administrator. The evidence reveals that he handles the Employer's phone systems. Part of Tomlianovich's duties includes selling phone services to schools and businesses, ordering any necessary equipment, and installing that equipment. Tomlianovich also handles all customer service calls for the phone system. Tomlianovich did not have any industry experience when he started working for the Employer.

Robert Mummert is a Plant Assigner. The evidence indicates that he deals primarily with plant records. When new customers order phone, television, or internet services, he sets up the port so everything is ready when the installation crew arrives at the customer's home. He works with the Engineering Department daily to get fiber and copper records. Mummert started in Install and Repair.

B. Install and Repair

The Install and Repair Department is comprised of a manager and six service technicians. Rory Woodside manages the department and reports to Director of Operations Aaron Buck. The service technicians are responsible for installing new services, addressing customer issues, and locating and marking existing infrastructure so customers do not damage cables while digging. The service technicians work remotely in the field. They take their work trucks home, and they report to the closest office. The technicians work in conjunction with the engineering department in that they rely on the maps generated by the Engineering department for their locating work. With the exception of the manager, none of service technicians had prior experience prior to working for the Employer. The service technicians received on-site training.

C. Engineering and Project Management

The Engineering and Project Management Department is managed by Project Engineering Manager Dan Self. The Project Engineering Manager reports to the Director of Operations. The Engineering and Project Management Department is comprised of four sub-departments: Construction, Engineering, Splicing, and Easements.

1. Construction

The Construction Department has four employees. The construction group buries fiber optic cables in the ground and repairs any damaged facilities. Construction employees are required to have commercial drivers' licenses, and they operate boring machines, vax, excavators, and plows. The Construction employees did not have prior training before joining the Employer; they received all of their training on-site. Their work is performed in the field and at customers' homes. Director of Operations Buck testified that Construction receives its work orders from the Engineering department. When new orders come into the Engineering Department, that information is relayed to Construction and those employees bury the lines at the customer's home. Construction also relies on the maps created by Engineering to locate current infrastructure. Lastly, Construction cannot construct on roads prior to receiving easements which are procured by the Easement Department.

2. Engineering

The Engineering Department comprises six employees. Joe Yelm is the Mapping/Project Lead. He is responsible for all the mapping and does estimates for new projects. Yelm uses a drawing system to create maps. The system also integrates into the billing system. Yelm sometimes designs the fiber assignments for contractors. Yelm started with the Employer in Install and Repair. Yelm does not have a degree in engineering or an engineering background. He worked for Comcast prior to coming to work for the Employer.

The record revealed that Systems Planners are also part of the Engineering Department, and they are responsible for preparing all the paperwork for the Employer's projects, including obtaining necessary permits and easements. The Systems Planners interact with the Construction Department by informing them that all documents and all the necessary paperwork have been completed before construction begins. Director of Operations Buck testified that Construction works with Systems Planners before the start of each project. The Systems Planners also deal directly with Easements. Neither of the systems planners had prior experience nor do they have degrees in engineering.

The record reveals that both Kevin Lewis and Ronald Peck handle Inspection/Staking, which is also part of the Engineering Department. Inspection/Staking employees work with customers to complete the field survey sheets. After the field survey sheets are completed, they are turned over to the Construction Department or the contractor who completes the work. Peck also handles customer complaints about cleanup of the construction. Peck does not have an

engineering degree and no engineering background. Peck previously worked in the Install and Repair Department.

The record reveals that the Splicing Department is also part of the Engineering Department. Dan Freeman is a fiber splicer. After the Construction crew buries the fiber, the fibers have to be spliced together before they can be used by Install and Network Operations. The splicer physically connects the fibers. Every home has its own fiber number, and Freeman works with Mapping in the Engineering Department daily to get that information. Freeman had no prior industry experience. Josh Dosier is the other Splicer. Dosier also fuses the fibers together, but he is also in charge of grounding the existing infrastructure so they can be located by the installation group. Dosier started with the Employer in Construction, moved to Install and Repair, and finally to Engineering. Dosier had no prior industry experience before working for the Employer.

The record reveals that only one person works in the Easement Department, Jeffrey Palmer. Director of Operations Buck testified that the Employer cannot plow township roads without an easement. The system planners prepare the easement paperwork and then turn it over to Palmer. Palmer then takes the paperwork to specific landowners and attempts to get their signatures on forms that allow the Employer to go through particular easements. The Employer is required to obtain easements before construction can begin. Palmer works exclusively with the Systems Planners in Engineering. Palmer is a part-time employee and had no prior industry experience before working with the Employer.

D. Custodian

Brian Riddell is the custodian at the Employer's facility. He is responsible for cleaning business offices and bathrooms, sweeping, and dusting. He also makes small repairs and does the landscaping and maintenance of the grounds at the Fairview office. Riddell reports directly to the Director of Operations. Director of Operations Buck testified that Riddell does not perform network operations, installer repair, construction, engineering, splicing, or easement work. Matt Tomlianovich confirmed in testimony that Riddell does not do any network operation and that his primary duties are maintenance, but also testified that Riddell helped when he needed extra manpower. Tomlianovich testified to a specific example when Riddell assisted him with bringing in equipment and inventorying said equipment. The record also revealed that Riddell worked with Anthony Hickle to run wires in the Employer's office.

Director of Operations Buck testified that the standard working hours for his employees in the Operations Department are 8:00AM to 5:00PM, but he also testified that many employees work overtime, nights, and weekends. Network Operations and Install and Repair employees have an on-call schedule, but the other employees do not. All employees are hourly employees with the exception of Network Operations Technician Rudy Hadsell who is salaried. Hadsell is salaried because he was previously in a management position. When Hadsell was moved out of the management position to Network Operations, his salary remained the same. All Operation employees enter their time into the same timekeeping systems. All employees in the department have a laptop computer, desktop computer, and tablet. Buck testified that all full-time employees

receive health benefits and pension plan uniformly. The employee handbook applies to all Operations employees as well.

The record reveals there is little consistency regarding wages within the Operations Department. The Network Operations sub-department has one salaried employee who makes \$36.92 per hour and four hourly employees whose wages range from \$17.97 to \$24.37 per hour with no one earning the same rate. The Install and Repair sub-department employees' wages range from \$13.00 to \$28.62 per hour, with two employees earning the same rate. The Engineering sub-department employees' wages range from \$13.00 to \$22.00 per hour with two employees earning the same rate. The easement employee earns \$15.15 per hour and the custodian earns \$13.13 per hour. On average, the Network Operations employees earn the highest wages, with their lowest earner making \$18.00 per hour. The Install and Repair, Engineering, Easement, and Custodian Departments have a total of 18 non-supervisory employees. Of the 18 employees, only two employees make over \$20.00 per hour and the rest of the employees make \$13.00 to \$15.66 per hour.

IV. DISCUSSION AND APPLICATION OF BOARD LAW

Traditionally, Section 9(a) of the Act has been interpreted to require the Board to determine not whether a unit sought is the only appropriate unit, or even the most appropriate unit, but rather if it is "an appropriate unit." Wheeling Island Gaming, 355 NLRB 637, 637 n. 1 (2010) (citing Overnite Transportation Co., 322 NLRB 723 (1996)). Additionally, the Board analyzes "whether employees in the proposed unit share a community of interest sufficiently distinct from the interests of employees excluded from the unit to warrant a separate bargaining unit." PCC Structurals Inc., 365 NLRB No. 160 slip op. at 11 (2017). In turn, when deciding whether a group of employees shares a community of interest, the Board considers whether the employees sought are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised. See United Operations, Inc., 338 NLRB 123 (2002). Particularly important in considering whether the unit sought is appropriate are the organization of the plant and the utilization of skills. See Gustave Fisher, Inc., 256 NLRB 1069 (1981). With regard to organization of the plant, the Board has made clear that it will not approve fractured units—that is, combinations of employees that are too narrow in scope or that have no rational basis. See Seaboard Marine, Ltd., 327 NLRB 556 (1999). However, all relevant factors must be weighed in determining community of interest.

The parties stipulated that the following job classifications within Operations should be included in any unit found appropriate by the Regional Director: Network Operations Technician Leads, Network Operations Technicians, Network Operations Administrators, Plant Assignors, Service Technicians, Construction employees, Grounding Technicians, and Splicers.

A. Organization of the Employer's Facility

An important consideration in any unit determination is whether the proposed unit conforms to an administrative function or grouping of an employer's operation. Thus, for example, generally the Board would not approve a unit consisting of some, but not all, of an employer's production and maintenance employees. See Check Printers, Inc., 205 NLRB 33 (1973). However, in certain circumstances the Board will approve a unit in spite of the fact that other employees in the same administrative grouping are excluded. See Home Depot USA, Inc., 331 NLRB 1289, 1289 and 1291 (2000). In this case, the unit sought by both the Petitioner and the Employer seeks to exclude certain classifications of employees within the same department, Operations. As set forth in more detail below, the units proposed by the parties do not share a community of interest sufficiently distinct from the employees those parties respectively seek to exclude. Thus, the entire Operations Department including the Engineering, Easement, and Custodial employees should be included in the bargaining unit.

B. Interchangeability and Contact among Employees

Interchangeability refers to temporary work assignments or transfers between two groups of employees. Frequent interchange "may suggest blurred departmental lines and a truly fluid work force with roughly comparable skills." Hilton Hotel Corp., 287 NLRB 359, 360 (1987). As a result, the Board has held that the frequency of employee interchange is a critical factor in determining whether employees who work in different groups share a community of interest sufficient to justify their inclusion in a single bargaining unit. Executive Resources Associates, Inc., 301 NLRB 400, 401 (1991), *citing* Spring City Knitting Co. v. NLRB, 647 F.2d 1011, 1015 (9th Cir. 1991).

In this case, the record reveals that there are little temporary work assignments between employees. This is true for employees within the Petitioner's proposed unit and the employees within the departments the Petitioner wishes to exclude. Director of Operations Buck testified that while such substitution could be done, it would be inefficient for operations. However, the evidence revealed that employees did make permanent transfers to other departments. For example, Jon Oest, Matt Tomlianovich, and Robert Mummert all worked in Install and Repair before moving to Network Operations. Josh Dosier went from Install and Repair to Splicing.

Also relevant is the amount of work-related contact among employees, including whether they work beside one another. Thus, it is important to compare the amount of contact employees in the unit sought by a union have with one another. See Casino Aztar, 349 NLRB 603, 605-606 (2007). The petitioner argues that Network Operations, Install and Repair, Construction, Splicing, and Custodian share a community of interest distinct from Engineering and Easement employees because there is little contact between these employees. In support of its position, the Petitioner highlights the fact that Easement employee Jeff Palmer is isolated and interacts exclusively with the Engineering department. The Petitioner also argues that the Systems Planners have little interaction with the petitioned-for unit. However, the record reveals that Construction, which is in the petitioned-for unit, relies on the maps created by Engineering to locate current infrastructure. Director of Operations Buck testified that Construction works with

systems planners before the start of each project. Construction cannot work on a road prior to receiving easements, which are procured by the Easement Department. The Systems Planners also deal directly with Easements. Lastly, both Jon Oest and Matt Tomlianovich testified that they have little interaction with Construction and Engineering employees. However, the Petitioner seeks to include the Construction employees in the unit, but exclude the Engineering employees. There is evidence of significant work-related contact between the employees the parties agree are in the unit and the employees the Employer seeks to include.

The Employer seeks to exclude the Custodian from the unit. While there is no evidence of substitution or interchangeability regarding the custodian, the record does reveal that the custodian is in regular contact with some of the Network Operations employees. Specifically Matt Tomlianovich testified that the Custodian helps out when extra manpower is needed, helps the Network Administrator run wires, and provides small tools to employees in the proposed unit at least once a week.

I find that the employee interchange and contact factor weighs in favor of including the Engineering, Easement, and Custodial employees in the unit.

C. Common Supervision

Another community-of-interest factor is whether the disputed and undisputed employees are commonly supervised. In examining supervision, most important is the identity of employees' supervisors who have the authority to hire, to fire or to discipline employees (or effectively recommend those actions) or to supervise the day-to-day work of employees, including rating performance, directing and assigning work, scheduling work providing guidance on a day-to-day basis. NCR Corporation, 236 NLRB 215 (1978). Common supervision weighs in favor of placing the employees in dispute in one unit. However, the fact that two groups are commonly supervised does not mandate that they be included in the same unit, particularly where there is no evidence of interchange, contact or functional integration. United Operations, *supra* at 125. Similarly, the fact that two groups of employees are separately supervised weighs in favor of finding against their inclusion in the same unit. However, separate supervision does not mandate separate units. Casino Aztar, *supra* at 607 fn. 11. Rather, more important is the degree of interchange, contact and functional integration. *Id.*

In this case, the record reveals that Network Operations, Install and Repair, Engineering and Construction employees report to separate mid-level managers. The mid-level managers report to the Director of Operations. The Custodian reports directly to the Director of Operations. While lack of common supervision generally weighs against a finding of community of interest, in this case the employees who the parties agree should be in the unit do not share common supervision at the sub-department level. The Petitioner seeks to exclude Engineering and Easement and provided no evidentiary support as to why they should be excluded from the unit given that they have the same manager as the Construction and Splicing employees it wishes to include. In addition, the Director of Operations testified that decisions to hire, fire, promote, demote, suspend, and transfer employees are not made by the managers, but rather by him.

The Employer seeks to exclude the Custodian from the unit, arguing that he does not report to a separate mid-level manager. The Employer's argument has less weight given that the Employer has agreed to a proposed unit in which employees do not have the same mid-level managers. Here, the fact that the custodian does not report to a mid-level manager does not mandate exclusion from the unit given that he reports to the Director of Operations, who oversees most of the supervisory functions for the other Operations employees.

D. The Nature of Employee Skills and Functions

This factor examines whether disputed employees can be distinguished from one another on the basis of job functions, duties or skills. If they cannot be distinguished, this factor weighs in favor of including the disputed employees in one unit. Evidence that employees perform the same basic function or have the same duties, that there is a high degree of overlap in job functions or of performing one another's work, or that the disputed employees work together as a crew, support a finding of similarity of functions. Evidence that disputed employees have similar requirements to obtain employment; that they have similar job descriptions or licensure requirements; that they participate in the same Employer training programs; and/or that they use similar equipment supports a finding of similarity of skills. See Casino Aztar, supra (2007); J.C. Penny Company, Inc., 328 NLRB 766 (1999); Brand Precision Services, 313 NLRB 657 (1994); Phoenix Resort Corporation d/b/a the Phoenician, 308 NLRB 826 (1992). Where there is also evidence of similar terms and conditions of employment and some functional integration, evidence of similar skills and functions can lead to a conclusion that disputed employees must be in the same unit, in spite of a lack of common supervision or evidence of interchange. *Id.*

In the instant case, the evidence indicates that employees in the petitioned-for unit were not required to have any specialized training or experience prior to being hired. Specifically, Director of Operations Buck testified that Network Operations Lead Technician Jon Oest worked for a fertilizer company prior to starting with the Employer. Network Administrator Matt Tomlianovich worked for a gas station prior to working with the Employer. Buck further testified that the service technicians, with the exception of the manager, had no prior experience but rather received in-house training after they began at the Employer. Construction employees were required to have a CDL but did not have other relevant prior experience.

Buck also testified that employees excluded from the petitioned-for unit did not have prior experience when they were hired for their positions. Specifically, Buck testified that the two system planners worked at a gas station and Wal-mart prior to working for the Employer. Mapping/Project Lead Joe Yelm had no engineering background. Inspection/ Staking employee Ronald Peck had no engineering experience; rather he drove a school bus prior to working for the Employer. Splicers Dan Freeman and Josh Dosier and easement employee Jeffery Palmer also had no experience. Buck also testified that Custodian Brian Riddell previously worked at a golf course where he was responsible for landscaping. However, despite his background, the evidence indicated that the custodian made minor repairs in the central office, assisted the network administrator in running wires, and helped with inventory.

The evidence also indicates that both petitioned-for employees and excluded employees have different job descriptions and use different equipment to perform those duties. Network Operations employees work with Employer's Adtran and Cisco equipment, both of which are designed to deliver services to customers. Network Administrator Matt Tomlianovich maintains the phone system. Plant Assignors set up phone, internet and television services at the central office so it appears when the installation employees visit customers' homes. The Install and Repair Department is responsible for installing new services, repairing customers' issues, and locating existing infrastructure facilities. The Splicing employees work in the field to physically connect fibers. Within the Engineering Department, Joe Yelm is responsible for mapping and new projects, the Systems Planners focus on completing easement paperwork, and Inspection and Staking work with customers to complete field surveys. The Easement employee works solely on obtaining easements.

Given that the parties seek to include employees who had no prior industry experience and perform distinct job functions, I see no reason to exclude the Engineering, Easement, and Custodial employees who similarly have no prior industry experience and perform distinct job functions.

E. Degree of Functional Integration

Functional integration refers to employees' work constituting integral elements of an employer's production process or business. For example, functional integration exists when employees in a unit sought by a union work on different phases of the same product or as a group provides a service. Another example of functional integration is an Employer's work flow involving all employees in a unit sought by a union. Evidence that employees work together on the same matters, have frequent contact with one another, and perform similar functions is relevant when examining whether functional integration exists. Transerv Systems, Inc., 311 NLRB 766 (1993). On the other hand, if functional integration does not result in contact among employees in the unit sought by a union, the existence of functional integration has less weight.

In this case, the record reveals the duties performed by all Operation employees are part of the Employer's mission of providing phone, internet, and television services to its customers. From the procuring of easements, burying of cables, connecting the fibers, installing the equipment, getting customers set up on the network, fielding customers' complaints, and maintaining and preparing services, all employees in the Operations Department perform essential roles in the Employer's business. While the record reveals that the custodian does not perform specific duties relating to providing phone, television, and internet service to the customer, the record does indicate that the custodian assists the Network Operations employees with non-custodial matters on a regular basis. Given that the Engineering, Easement, and Custodial employees play a key role in the Employer's mission of providing internet, phone, and television services to customers, I find no rational basis to exclude them from the unit based on this factor.

F. Terms and Conditions of Employment

Terms and conditions of employment include whether employees receive similar wage ranges and are paid in a similar fashion (for example, hourly); whether employees have the same fringe benefits; and whether employees are subject to the same work rules, disciplinary policies and other terms of employment that might be described in an employee handbook. However, the facts that employees share common wage ranges and benefits or are subject to common work rules does not warrant a conclusion that a community of interest exists where employees are separately supervised, do not interchange and/or work in a physically separate area. Bradley Steel, Inc., 342 NLRB 215 (2004); Overnite Transportation Company, 322 NLRB 347 (1996). Similarly, sharing a common personnel system for hiring, background checks and training, as well as the same package of benefits, does not warrant a conclusion that a community of interest exists where two classifications of employees have little else in common. American Security Corp., 321 NLRB 1145 (1996).

In this case, the record reveals that all Operations Department employees receive health benefits and a pension plan. The Employee Handbook applies to all employees. All employees in the Operations Department, except one, are hourly employees. The wage ranges for all Operations Department employees vary within each sub-department. For the aforementioned reasons, there is insufficient evidence to support a finding that the Engineering, Easement, and Custodian employees do not share a community of interest with the agreed-to unit and thus should be excluded.

G. Custodian Classification Belongs in the Unit

As set forth above, the record reveals the custodian shares a community-of-interest with the other employees in the petitioned-for unit. In this regard, he earns comparable wages, works in close proximity to other unit employees and performs some unit work, as needed. See Virginia Manufacturing Co., Inc., 311 NLRB 992, 994 (1993), North Jersey Newspapers Company, 322 NLRB 394, 396 (1996). Moreover, I note that excluding the custodian from the unit would result in a residual unit of one employee, a result the Board has long found to be undesirable. See Gateway Equipment Co. Inc., 303 NLRB 340, 342 (1991). In similar circumstances, the Board has included such lone residual employees in a petitioned-for unit. See United Dairy Farmers Cooperative Association, 242 NLRB 1026 (1979) (helper included in unit). Accordingly, I find that the custodian is properly included in the appropriate unit found herein.

H. Jon Oest is not a Supervisor under the Act.

The Employer argues that Jon Oest, Network Operations Lead Technician, is a Supervisor under the Act. Section 2(11) of the Act defines a supervisor as follows:

any individual having authority, in the interest of the Employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or

effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The burden of proving supervisory status within the meaning of Section 2(11) of the Act rests with the party asserting that supervisory status exists; here the Employer. See Dean & Deluca New York, Inc., 338 NLRB 1046, 1047 (2003). Thus, the Employer must show: (1) that Oest has the authority to engage in any one of the supervisory functions enumerated above; (2) Oest's exercise of such authority is not of a merely routine or clerical nature, but requires the use of "independent judgment;" and (3) Oest's authority is exercised "in the interest of the Employer." See Oakwood Healthcare, Inc., 348 NLRB 686, 687 (2006).

The Board has explained that "to exercise independent judgment, an individual must 'at minimum act, or effectively recommend action, free of the control of others and form an opinion or evaluation by discerning and comparing data.' A judgment is not independent 'if it is dictated or controlled by detailed instructions, whether set forth in company policies or rules, the verbal instructions of a higher authority, or in the provisions of a collective-bargaining agreement.'" Modesto Radiology Imaging, Inc., 361 NLRB No. 84, slip op. at 1 (NLRB Oct. 31, 2014) (citing Oakwood Healthcare, Inc., 348 NLRB 686, 687 (2006)).

Director of Operations Buck testified that Oest does not have the authority to hire, fire, transfer, suspend or discipline, layoff or recall, promote, approve time off, or direct employees in their work. The Employer argues that Oest assigns work, supervises employees when the Network Operations Manager was absent, attends management meetings, and received a promotion when he was named team lead. The Board has defined the term "assign" to mean the "designating of an employee to a place (such as a location, department, or wing), appointing an individual to a time (such as a shift or overtime period), or giving significant overall duties, i.e., tasks, to an employee." Golden Crest Healthcare Center, 348 NLRB 727, 728 (2006). Buck testified that Oest gives out day-to-day assignments in which he tells employees where to go. Buck further testified that he had no knowledge as to whether Oest checks with the Network Operations Manager before assigning work. Oest acknowledges that employees come to him for advice, but he attributes that to the fact that he has worked at the Employer the longest. Oest denies that he assigns work to other Network Operations employees. Network Operations employee Matt Tomlianovich testified that he reports to the Network Operations Manager and not to Jon Oest. Tomlianovich also testified that he is not assigned work that often because he knows what needs to be done. He received his most recent assignment from his manager, Jason Baugher.

Jon Oest testified that when he received his promotion, he continued doing what he previously had done, and he also took on the work of an employee who had recently retired. Oest still remained an hourly employee. In addition, the record reveals that those in management positions make significantly more than non-supervisory employees. Jon Oest makes \$24.37 per hour. Network Operations employee Rudy Hadsell was previously in a management position. As a manager, he was a salaried employee and he made \$36.92 per hour. The manager of the Install

and Repair department makes \$27.90 per hour and Project Engineering Manager makes \$31.44 per hour.

Jon Oest acknowledged that he does attend Plant Management meetings. Oest testified that during those meetings the managers discuss upcoming projects and prioritizing projects. Oest testified that during those meetings, he makes no recommendations for hiring or firing, transferring, suspending or disciplining, laying off, promoting, rewarding, or assigning employees. Director of Operations Buck could not provide a single example of Oest's engaging in supervisory activity or using independent judgment during Plant Manager meetings or on any other occasion.

I have reviewed the record and considered the Employer's assertions. I conclude that the record as a whole fails to establish that Oest uses independent judgment in the exercise of any putative authority, and, therefore, he is not a supervisor within the meaning of Section 2(11) of the Act. The parties stipulated on the record that, in the event John Oest was not found to be a 2(11) supervisor by the Regional Director, his position of Network Operations Lead Technician should also be included in any unit found appropriate.

V. CONCLUSION

Based upon the entire record in this matter and in accordance with the discussion above, I conclude that an Operations-wide unit is appropriate. Accordingly, I direct an election in the following unit.

Included: All full-time and regular part-time Network Operations Lead Technicians, Network Operations Technicians, Network Operations Administrators, Plant Assignors, Service Technicians, Construction employees, Grounding Technicians, Splicers, Custodians, Mapping/Project Leads, Systems Planners, Inspection/Staking employees, and Easement employees employed by the Employer at its Fairview, Illinois facility; BUT EXCLUDING All Customer Service Representative Leads, Customer Service Representatives, Sales Representatives, Sales Support Specialists, Marketing Coordinators, Billing Specialists, Account/Payroll Clerks, Lead Accountants, managerial employees, office clerical employees, professional employees, and guards and supervisors as defined in the Act.

VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by Communication Workers of America, AFL-CIO.

A. Election Details

The election will be held on September 26, 2018 from 8:00A.M. to 10:00 A.M. at The Community Room in The Employer's Facility located at 285 Mid Century Lane, Fairview, IL 61432.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending September 15, 2018, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **September 21, 2018**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the

list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

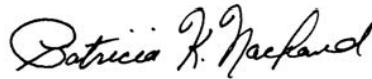
RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: September 19, 2018



PATRICIA K. NACHAND
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 25
575 N Pennsylvania St Ste 238
Indianapolis, IN 46204-1520